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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 PAMELA STICKLER,

11 Plaintiff,

14 vs.

18 MISTY PROAK,

19 Defendant.
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CASE NO. 12-CV-613 - IEG (KSC)

ORDER:

(1) **GRANTING PLAINTIFF'S
MOTION TO PROCEED IN
FORMA PAUPERIS;**

[Doc. No. 2]

(2) **SUA SPONTE DISMISSING
COMPLAINT; AND**

[Doc. No. 1]

(3) **DENYING WITHOUT
PREJUDICE AS MOOT MOTION
FOR A TEMPORARY
RESTRAINING ORDER AND
MOTION FOR APPOINTMENT
OF COUNSEL**

[Doc. Nos. 1, 3]

23 Plaintiff Pamela Stickler ("Plaintiff") commenced this action on March 9, 2012 against
24 Defendant Misty Proak ("Defendant"). [Doc. No. 1, Compl.] Along with her complaint, Plaintiff
25 submitted a motion to proceed *in forma pauperis* and a motion for the appointment of counsel.
26 [Doc. Nos. 2-3.] Having considered Plaintiff's submissions, the Court **GRANTS** Plaintiff leave to
27 proceed *in forma pauperis*, **DISMISSES WITHOUT PREJUDICE** Plaintiff's complaint, and
28 **DENIES AS MOOT** Plaintiff's motion for the appointment of counsel and Plaintiff's motion for a

1 temporary restraining order.

2 **DISCUSSION**

3 **I. MOTION TO PROCEED *IN FORMA PAUPERIS***

4 All parties instituting any civil action, suit, or proceeding in a district court, except an
5 application for writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a).
6 However, an action may proceed despite failure to pay the filing fee if the party is granted an *in*
7 *forma pauperis* (“IFP”) status. See Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999). The
8 Court may grant IFP status to any party who demonstrates that he or she is unable to pay such fees
9 or give security therefor. 28 U.S.C. § 1915(a).

10 In the present case, having reviewed Plaintiff’s motion and declaration in support of the
11 motion, the Court finds that Plaintiff has made a sufficient showing of inability to pay the required
12 filing fees. See Rodriguez, 169 F.3d at 1177. Accordingly, good cause appearing, the Court
13 **GRANTS** Plaintiff leave to proceed *in forma pauperis*.

14 **II. INITIAL SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)**

15 After granting IFP status, the Court must dismiss the case if the complaint “fails to state a
16 claim on which relief may be granted” or is “frivolous.” 28 U.S.C. § 1915(e)(2)(B); see also Lopez
17 v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not
18 only permits but requires” the court to *sua sponte* dismiss an *in forma pauperis* complaint that fails
19 to state a claim). In order to properly state a claim for relief, “a complaint must contain sufficient
20 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v.
21 Iqbal, –U.S.–, 129 S. Ct. 1937, 1949 (2009). A complaint must contain more than a “labels and
22 conclusions” or a “formulaic recitation of the elements of a cause of action;” it must contain factual
23 allegations sufficient to “raise a right to relief above the speculative level.” Bell Atlantic Corp. v.
24 Twombly, 550 U.S. 544, 555 (2007). “‘The pleading must contain something more . . . than . . . a
25 statement of facts that merely creates a suspicion [of] a legally cognizable right of action.’” Id.

26 A complaint is frivolous “where it lacks an arguable basis either in law or in fact.” Neitzke
27 v. Williams, 490 U.S. 319, 325 (1989) (superseded on other grounds as stated in Lopez v. Smith,
28 203 F.3d 1122, 1126 (9th Cir. 2000)). Where a complaint fails to state “any constitutional or

1 statutory right that was violated, nor asserts any basis for federal subject matter jurisdiction,” there
 2 is no “arguable basis in law” under Neitzke, and the court on its own initiative may decline to
 3 permit the plaintiff to proceed and dismiss the complaint under Section 1915. Cato v. United
 4 States, 70 F.3d 1103, 1106 (9th Cir. 1995).

5 As currently pleaded, Plaintiff’s complaint fails to state a cognizable claim and is frivolous
 6 to the extent it lacks an arguable basis in law. Plaintiff alleges that Defendant told a pastor that he
 7 did not have to give Plaintiff financial help when she requested help from a Lutheran Church.
 8 [Compl. at 2.] Plaintiff also alleges that Defendant might have called the police when Plaintiff was
 9 attending a church in old town San Diego. [Id.] These allegations fail to identify any constitutional
 10 or statutory right that Defendant violated, and they fail to provide any facts that could establish a
 11 cause of action against Defendant. In addition, Plaintiff fails to assert any basis for federal subject
 12 matter jurisdiction.

13 Even affording Plaintiff’s complaint the special consideration given to *pro se* claimants, her
 14 allegations fail to present a cognizable legal theory or facts sufficient to support a cognizable legal
 15 theory against Defendant. Accordingly, the Court **DISMISSES WITHOUT PREJUDICE**
 16 Plaintiff’s complaint as frivolous and for failure to state a claim upon which relief can be granted.

17 **III. MOTION FOR APPOINTMENT OF COUNSEL**

18 In addition to her complaint, Plaintiff has filed a motion for appointment of counsel. [Doc.
 19 No. 3.] Plaintiff’s complaint also appears to be requesting a temporary restraining order (“TRO”)
 20 against Defendant. [Compl. at 2.] Because the Court dismisses Plaintiff’s complaint in its entirety
 21 without prejudice, Plaintiff’s motion for appointment of counsel and motion for a TRO are
 22 **DENIED WITHOUT PREJUDICE** as moot.

23 CONCLUSION

24 Based on the foregoing, the Court **GRANTS** Plaintiff’s Motion to Proceed *in Forma*
 25 *Pauperis* pursuant to 28 U.S.C. § 1915(a), but **DISMISSES WITHOUT PREJUDICE** Plaintiff’s
 26 complaint as frivolous and for failure to state a claim upon which relief can be granted. The Court
 27 also **DENIES WITHOUT PREJUDICE** as moot Plaintiff’s motion for appointment of counsel
 28 and Plaintiff’s motion for a TRO.

1 Plaintiff is **GRANTED** thirty (30) days from the date this Order is filed to file a First
2 Amended Complaint addressing the deficiencies of the pleading set forth above. Plaintiff is
3 cautioned her First Amended Complaint must be complete in itself, without relying on references to
4 the original Complaint. Plaintiff is further cautioned any defendant not named or claim not
5 re-alleged will be considered waived. See King v. Attiyeh, 814 F.3d 1172, 1177-79 (9th Cir. 1996).
6 Plaintiff is also cautioned that if her amended complaint does not state a claim, the Court may
7 dismiss her complaint without leave to amend.

8 **IT IS SO ORDERED.**

9 **DATED:** March 22, 2012



IRMA E. GONZALEZ
United States District Judge